

**Title Insurance Report
by the Office of the Insurance
Commissioner**

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Background

An investigation by the Insurance Commissioner into the use of incentives and inducements by title insurers in 2005 and 2006 revealed widespread and pervasive use of illegal spending to steer business to their companies. The investigation found that title insurers were lavishing thousands of dollars worth of gifts, gratuities, junkets and other incentives on middlemen – primarily real estate agents and brokers – who were in a position to refer home buyers to specific companies for their title insurance needs.

Although the improper use of incentives and inducements had become routine for this industry, the Insurance Commissioner's Office did not take disciplinary action against individual violators. Instead, the agency opted to put the entire industry on notice that the spending behavior violated state laws regulating incentives and inducements (\$25 per person per year), and that the companies would be subject to vigorous enforcement if violations occurred from that point forward. The **agency also issued technical guidance** to assist the industry with compliance.

(For details, see the Insurance Commissioner's report, **"Investigation into the Use of Incentives and Inducements by Title Insurance Companies,"** issued in October, 2006).

The next step

To gauge the industry's degree of compliance, the agency waited three months and then targeted three title insurers scrutinized in the initial investigation for a spot check in mid February. The agency reviewed general ledgers and expense reports for the three-month period ending Feb. 15, 2007. The investigated companies, covering their operations in King, Pierce and Snohomish counties, were:

- **First American Title Insurance Company**
- **Ticor Title Insurance Company**
- **Fidelity National Title**

General findings

An extensive review of the ledgers and expense documents at these three companies revealed that violations were still occurring at two of the three companies. As a result, the two companies were cited for the violations with fines totaling \$35,000.

Among the findings:

- Employees at all three of the companies were given compliance training related to inducements and incentives.
- There was a significant reduction in the total dollars spent by the three title insurers for marketing and entertainment. The companies were still spending money on sports tickets, expensive cigars, cookies, gift cards, gym memberships, meals and parties, but the gifts were claimed to be for company employees rather than to third-parties as inducements. In some instances, the documentation at all three companies was inadequate to establish exactly who

benefited from the expenditures. However, overall the documentation was deemed credible on the question of whether employees were the beneficiaries.

- While accounting procedures have improved since the initial investigation, the companies were still falling short when it came to organization and specificity for tracking purposes. The companies were not requiring sales representatives to provide the documentation necessary to truly monitor and demonstrate compliance. Expense account reports for meals and such were still generally “taken on faith” with regard to who and how many attended, the purpose of the event, and compliance with limits on expenditures for individuals. All three companies still permitted employees to divide up meals and entertainment expenses on a pro-rated basis, rather than recording how much was actually spent on each individual.
- While there has been an increase in the training of title insurance employees stressing the importance of compliance and documentation, there are indications that some employees are not clear about how to calculate the \$25 per person per year allowable expense. Nor are they certain what is required for adequate documentation of expenses.
- Although the amount and value of food, beverages, classes and “customer service” items provided to individual agents, builders and lenders has been significantly reduced from past levels, some inducements continue.

For example, title insurers are requiring payment from real estate agents for “clock hour” classes and materials, but those payments clearly do not reflect the true costs, including in-house instructors’ time and use of classrooms. (“Clock hour” classes refer to the continuing education requirements that real estate professionals must complete to maintain their licenses.)

Specific findings

Ticor Title Insurance Co. and First American Title Insurance Co. were cited for specific violations. They were:

Ticor Insurance Title Co.

The company’s purchase of holiday gifts, dinners and floral arrangements for real estate agents and lenders in three instances, exceeded \$25 per person and constituted violations of regulations pertaining to rebates and illegal inducements. The agency fined the company \$25,000 with \$20,000 suspended on condition of no further violations and the company’s adherence to a compliance plan.

Specifically, the company:

- On Dec. 18, 2006, purchased four holiday gifts for real estate agents and lenders that cost \$29 each, and one holiday gift for a realtor that cost \$31.95.
- On Dec. 28, 2006, purchased dinner for three individuals, two of whom were real estate agents or lenders, that cost \$216.16.
- On Jan. 10, 2007, purchased a floral arrangement for a real estate agent that cost \$58.75.

First American Title Insurance Co.

First American's violations occurred in the company's sponsorship of continuing education "clock hour" classes that real estate professionals must complete to maintain their licenses. The classes violated agency regulations pertaining to rebates and illegal inducements. A fine of \$10,000 was levied, with \$7,500 suspended on condition that the company have no other violations and carry out the requirements of a compliance plan.

The specifics:

- Between Dec. 6, 2006 and Feb. 14, 2007, the company offered three classes in Sumner, Puyallup and Bonney Lake on the subject of escrow to a total of 37 real estate agents. The four-hour classes were provided at no cost to the agents.
- During the three-month period under review, the company offered 31 classes to individuals, variously charging between \$15 and \$40 per person. The company failed to include the cost of advertisement, facilities, instructors and other expenses in establishing the class fees.

Conclusions and recommendations

Aside from the violations cited above, the three companies in this investigation appear to be striving for compliance. The sheer decline in the amount of dollars expended on incentives and inducements by these companies indicates that there has been a significant shift toward compliance.

In addition, senior management at the companies has implemented a zero-tolerance policy for violations. The companies also have established policies and procedures, and installed software and programs designed to monitor compliance with the law.

This investigation also resulted in numerous reports that companies not included in this investigation are continuing to flout the laws pertaining to inducements and incentives. These reports and information flowed from sources independent from the three investigated companies, and warrant further investigation.

Continued enforcement

The agency will maintain a random schedule of unannounced enforcement investigations in the future to ensure that title companies are complying with requirements for inducements and incentives, and maintaining appropriate documentation of these expenses.

In addition, the agency will continue to report the results, findings and any enforcement actions taken as a result of these investigations.

The agency will maintain this strategy until the Insurance Commissioner is satisfied that title insurance companies understand the limits for incentives and inducements, and consistently comply with those requirements.